

SENATE COMMITTEE SUBSTITUTE

FOR

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HOUSE BILL NO. 107

AN ACT

To repeal section 537.675, RSMo 2000, relating to judicial and administrative procedures, and to enact in lieu thereof seven new sections relating to the same subject.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Section 537.675, RSMo 2000, is repealed and seven new sections enacted in lieu thereof, to be known as sections 537.675, 537.678, 537.681, 537.684, 537.687, 537.690 and 537.693, to read as follows:

537.675. 1. As used in sections 537.675 through 537.693, the following terms mean:

(1) "Annual claims", that period of time commencing on the first day of January of every year after December 31, 2002, and ending on the last day of that calendar year;

(2) "Commission", the labor and industrial relations commission;

(3) "Division", the division of workers' compensation;

(4) "Initial claims period", that period commencing on the August 28, 2001, and ending on December 31, 2002;

(5) "Punitive damage final judgment", an award for punitive damages excluding interest that is no longer subject to review by courts of this state or of the United States;

(6) "Uncompensated tort victim", a person who:

(a) Is a party in a personal injury or wrongful death lawsuit; or is a tort victim whose claim against the tortfeasor has been settled for the policy limits of insurance covering the liability of such tortfeasor and such policy limits are inadequate in light of the nature and extent of damages due to the personal injury or wrongful death;

(b) Unless described in paragraph (a) of this subdivision:

a. Has obtained a final monetary judgment in that lawsuit described in paragraph (a) of this subdivision against a tortfeasor for personal injuries, or wrongful death in a case in which all appeals are final;

b. Has exercised due diligence in enforcing the judgment;
and

c. Has not collected the full amount of the judgment;

(c) Is not a corporation, company, partnership or other incorporated or unincorporated commercial entity;

(d) Is not any entity claiming a right of subrogation;

(e) Was not on house arrest and was not confined in any federal, state, regional, county or municipal jail, prison or other correctional facility at the time he or she sustained injury from the tortfeasor;

(f) Has not pleaded guilty to or been found guilty of two or more felonies, where such two or more felonies occurred within ten years of the occurrence of the tort in question, and where

either of such felonies involved a controlled substance or an act of violence; and

(g) Is a resident of the state of Missouri or sustained personal injury or death by a tort which occurred in the state of Missouri.

2. There is created the "Tort Victims' Compensation Fund". Unexpended moneys in the fund shall not lapse at the end of the biennium as provided in section 33.080, RSMo.

[2. Fifty percent of any final judgment awarding punitive damages after the deduction of attorneys' fees and expenses shall be deemed rendered in favor of the state of Missouri. The circuit clerks shall notify the attorney general of any final judgment awarding punitive damages rendered in their circuits. With respect to such fifty percent, the attorney general shall collect upon such judgment, and may execute or make settlements with respect thereto as he deems appropriate for deposit into the fund.]

3. Any party receiving a judgment final for purposes of appeal for punitive damages in any case filed in any division of any circuit court of the state of Missouri shall notify the attorney general of the state of Missouri of such award, except for actions claiming improper health care pursuant to chapter 538, RSMo. The state of Missouri shall have a lien for deposit into the tort victims' compensation fund to the extent of fifty percent of the punitive damage final judgment which shall attach in any such case after deducting attorney's fees and expenses. In each case, the attorney general shall serve a lien notice by certified mail or registered mail upon the party or

parties against whom the state has a claim for collection of its share of a punitive damage final judgment. On a petition filed by the state, the court, on written notice to all interested parties, shall adjudicate the rights of the parties and enforce the lien. The lien shall not be satisfied out of any recovery until the attorney's claim for fees and expenses is paid. The state can file its lien in all cases where punitive damages are awarded upon the entry of the judgment final for purposes of appeal. The state cannot enforce its lien until there is a punitive damage final judgment. Cases resolved by arbitration, mediation or compromise settlement prior to a punitive damage final judgment are exempt from the provisions of this section. Nothing in this section shall hinder or in any way affect the right or ability of the parties to any claim or lawsuit to compromise or settle such claim or litigation on any terms and at any time the parties desire.

[3.] 4. The state of Missouri shall have no interest in or right to intervene at any stage of any judicial proceeding [under] pursuant to this section, except to enforce its lien rights as provided in subsection 3 of this section.

[4. No disbursement shall be made from the tort victims' compensation fund until procedures for disbursement are established by further action of the general assembly.]

5. There is hereby established in the state treasury the "Legal Services for Low-Income People Fund", which shall consist of twenty-six percent of all payments received into the tort victims' compensation fund and all interest accruing on the principal, regardless of source or designation including twenty-

six percent of the money that upon the effective date of this act is in the tort victims' compensation fund. Moneys, funds or payments paid to the credit of the legal services for low-income people fund shall, at least as often as annually, upon appropriation, be distributed to the legal services organizations in Missouri which are recipients of federal Legal Services Corporation funding and shall be used for no other purpose than as authorized pursuant to sections 537.675 to 537.693. The funds so distributed shall be used by legal services organizations in Missouri solely to provide legal services to its low-income population. Funds shall be allocated according to the most recent official census data from the Bureau of Census, United States Department of Commerce for people in poverty residing in Missouri. Notwithstanding the provisions of section 33.080, RSMo, any balance remaining in the legal services for low-income people fund at the end of any biennium shall not be transferred to general revenue, but shall remain in the fund and be distributed in accordance with the provisions of this section. Moneys in the tort victims' compensation fund shall not be used to pay any portion of a refund mandated by article X, section 18 of the constitution.

537.678. 1. Seventy-four percent of all payments received by the tort victims' compensation fund regardless of source or designation shall, upon appropriation, be appropriated to the division of workers' compensation to assist uncompensated tort victims and shall be used for no other purpose. Notwithstanding the provisions of section 33.080, RSMo, any balance remaining in the budget of the division of workers' compensation for

compensation of uncompensated tort victims shall not be transferred to general revenue but shall remain in the fund. Moneys in the tort victims' compensation fund shall not be used to pay any portion of a refund mandated by article X, section 18 of the constitution.

2. The division of workers' compensation shall, pursuant to the provisions of sections 537.678 to 537.693, have jurisdiction to determine and award compensation to or on behalf of uncompensated tort victims. The requirement that the uncompensated tort victim has obtained a final judgment may be waived by the division based upon the tortfeasor's bankruptcy, inability to identify the tortfeasor or inability to obtain service of process on the tortfeasor after making a good faith effort to do so or the claim against tortfeasor has been settled for the insurance policy limits available to cover the liability of such tortfeasor and such policy limits are inadequate in light of the injury suffered by the tort victim. The division is not required to award compensation, nor is it required to award the full amount claimed. The division shall base its award of compensation upon independent verification obtained during its investigation. In no case shall the amount paid to the individual exceed the lesser of either the net award granted by the court or jury, or the amount remaining in the tort victims' compensation fund, provided, however, that no award shall exceed three hundred thousand dollars.

3. Claims shall be made by filing an application for compensation with the division. The division shall furnish an application form which shall include:

(1) The name and address of the uncompensated tort victim;

(2) If the claimant is not the uncompensated tort victim, the name and address of the claimant and relationship to the victim, the name and address of any dependents of the victim, and the extent to which each is so dependent;

(3) The date and nature of the tort on which the application for compensation is based;

(4) The date and court in which a judgment was rendered against the tortfeasor, including the judgment amount specifying medical costs, if available. If no final judgment was obtained and the claimant is requesting a waiver pursuant to subsection 2 of this section, the application shall include a statement establishing the basis for a waiver;

(5) The nature and extent of the injuries sustained by the victim, the names and addresses of those giving medical and hospital treatment to the victim and whether death resulted;

(6) The loss to the claimant or a dependent resulting from the injury or death;

(7) The amount of benefits, payments or awards, if any, payable from any source that the claimant or dependent has received or for which the claimant or dependent is eligible as a result of the injury or death;

(8) Releases by the claimant authorizing any reports, documents and other information relating to the matters specified pursuant to this section to be obtained by the division; and

(9) Any other information as the division determines is necessary.

4. In addition to the application, the division may require

that the claimant submit materials substantiating the facts stated in the application.

5. If the division finds that an application does not contain the required information or that the facts stated therein have not been substantiated, it shall notify the claimant in writing of the specific additional items or information or materials required and that the claimant has thirty days from the date of mailing in which to furnish those items to the division. Unless a claimant requests and is granted an extension of time by the division, the division may reject, without prejudice to refiling of another application for the same matter, the claim of the claimant for failure to file the additional information or materials within the specified time. Extensions of time to file such additional information shall be freely granted.

6. The claimant may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the division has completed its consideration of the original application.

7. Any state or local agency, including a prosecuting attorney or law enforcement agency, shall make available without cost to the fund, all reports, files and other appropriate information that the division requests in order to make a determination that a claimant is eligible for an award pursuant to sections 537.675 to 537.693.

8. Any notice required pursuant to sections 537.675 to 537.693, with the exception of the lien notice required by subsection 3 of section 537.675, shall be sent by first class

mail, postage prepaid, to the party's last known address or to the last known address of the party's attorney or other legal representative.

537.681. 1. The following persons shall be eligible for compensation pursuant to sections 537.675 to 537.693:

(1) An uncompensated tort victim; and

(2) In the case of the death of the uncompensated tort victim as a direct result of the tort:

(a) The class of persons identified in subsection 1 of section 537.080; and

(b) Any relative of the uncompensated tort victim who legally assumes the obligation for, or who has incurred medical or burial expenses as a direct result of the tort at issue.

2. An uncompensated tort victim that is found personally liable on a cross-complaint of tort, or found to have been contributorily or comparatively negligent, shall only be eligible to receive compensation to the extent of the favorable net amount awarded by the judge or jury. No uncompensated tort victim or other eligible claimant shall be denied compensation solely because such person is a relative of the tortfeasor or was living with the tortfeasor as a family or household member at the time of the injury or death. The division, however, may award compensation to a victim or other eligible claimant only if the division can reasonably determine that the tortfeasor will receive no substantial economic benefit or unjust enrichment from the compensation.

3. The division may waive the requirements of paragraph (e) of subdivision (5) of subsection 1 of section 537.675 if it

determines that the interest of justice would be served by doing so.

4. In the case of an uncompensated tort victim or other eligible claimant who is incarcerated as a result of a conviction of a crime not related to the incident which is the basis for the claimant's application:

(1) The division shall suspend all proceedings and payments until such time as the uncompensated tort victim or other eligible claimant is released from incarceration;

(2) The division shall notify the claimant at the time the proceedings are suspended of the right to reactivate the claim within six months of his or her release from incarceration;

(3) The uncompensated tort victim or other eligible claimant may file an application to request that the case be reactivated not later than six months after the date he or she is released from incarceration. Failure to file such request within the six-month period shall serve as a bar to any recovery.

537.684. 1. A claim for compensation may be filed by a person eligible for compensation or, if the person is an incapacitated or disabled person, or a minor, by the person's spouse, parent, conservator or guardian.

2. A claim shall be filed not later than two years after the judgment upon which it is based becomes final and all appeals are final, except with regard to the initial claims period. If there is no judgment, claims must be filed within time limits prescribed pursuant to section 516.120, RSMo, except for cases resulting in death, in which case claims must be filed within time limits prescribed pursuant to section 537.100, except with

regard to the initial claims period. With regard to the initial claims period, any claim may be filed that is based upon a judgment that is not expired or that is based upon a claim not reduced to judgment for a reason allowed by subsection 2 of section 537.678, and which would not be barred by the applicable statute of limitations if the tortfeasor could be served with process or had not taken bankruptcy.

3. Each claim shall be filed in person or by mail. The division shall investigate such claim prior to the opening of formal proceedings. The director of the division shall assign an administrative law judge, associate administrative law judge or legal advisor within the division to hear any claim for compensation filed. The claimant shall be notified of the date and time of any hearing on the claim. In determining the amount of compensation for which a claimant is eligible, the division shall:

(1) Consider the facts stated on the application filed pursuant to section 537.678;

(2) Obtain a copy of the final judgment, if any, from the appropriate court;

(3) Determine the amount of the loss to the claimant, or the victim's survivors or dependents; and

(4) If there is no final judgment, determine the degree or extent to which the victim's acts or conduct provoked, incited or contributed to the injuries or death of the victim.

4. The claimant may present evidence and testimony on his or her own behalf or may retain counsel.

5. Prior to any hearing, the person filing a claim shall

submit reports, if available, from all hospitals, physicians or surgeons who treated or examined the victim for the injury for which compensation is sought. If, in the opinion of the division, an examination of the injured victim or a report on the cause of death of the victim would be of material aid, the division may appoint a duly qualified, impartial physician to make an examination and report. A finding of the judge or jury in the underlying case shall be considered as evidence.

6. Each and every payment shall be exempt from attachment, garnishment or any other remedy available to creditors for the collection of a debt, provided however, this section shall not in any way affect the right of any attorney who represents or represented any claimant to collect any fee or expenses to which he or she is entitled.

7. Payments of compensation shall not be made directly to any person legally incompetent to receive them but shall be made to the parent, guardian or conservator for the benefit of such minor, disabled or incapacitated person.

8. Payment of all claims from the fund shall be made on the following basis, to-wit:

(1) With regard to all claims that are made during the initial claims period, the division shall determine the aggregated amount of all awards made on these claims. Such determination shall be made on or before June 30, 2003. If the aggregate value of the awards does not exceed the total amount of money in the fund, then the awards shall be paid in full on or before September 30, 2003; If the aggregate value of the awards does exceed the total amount of money in the fund, then the

awards shall be paid on a prorata basis on or before September 30, 2003.

(2) With regard to all claims that are made after the initial claims period, the division shall determine the aggregate amount of all awards made on those claims filed during an annual claims period. Such determination shall be made on or before the 30th day of June in the next succeeding year. If the aggregate value of the awards does not exceed the total amount of money in the fund, then the awards shall be paid in full on or before the 30th day of September in the next succeeding year. If the aggregate value of the awards does exceed the total amount of money in the fund, then the awards shall be paid on a prorata basis on or before the 30th day of September in the next succeeding year.

9. If there are no funds available, then no claim shall be paid until funds have accumulated in the tort victims' compensation fund and have been appropriated to the division for payment to uncompensated tort victims. When sufficient funds become available for payment of claims of uncompensated tort victims, awards that have been determined but have not been paid shall be paid in chronological order with the oldest paid first, based upon the date on which the application was filed with the division. Any award pursuant to this subsection that cannot be paid due to a lack of funds appropriated for payment of claims of uncompensated tort victims shall not constitute a claim against the state.

10. In the event there are no funds available for payment of claims, then the division may suspend all action related to

valuing claims and granting awards until such time as funds in excess of one hundred thousand dollars have accumulated in the tort victims' compensation fund, at which time the division shall resume its claim processing duties.

537.687. 1. Upon request by the division for verification of injuries of victims, a medical provider shall submit medical records and other information requested by the division. Any costs to the claimant for obtaining and providing such information may be submitted as part of the claim.

2. Failure to submit the information as required by this section shall be an infraction.

537.690. 1. Any of the parties to a decision of the division on a claim heard under the provisions of sections 537.675 to 537.693 may, within thirty days following the date of notification or mailing of such decision, file a petition with the labor and industrial relations commission to have the decision reviewed by the commission. The commission may allow or deny a petition for review. If a petition is allowed, the commission may affirm, reverse or set aside the decision of the division on the basis of the evidence previously submitted in such case or may take additional evidence or may remand the matter to the division with directions. The commission shall promptly notify the parties of its decision and the reasons therefore.

2. Any petition for review filed pursuant to subsection 1 of this section shall be deemed to be filed as of the date endorsed by the United States Postal Service on the envelope or container in which such petition is received.

3. Any party who is aggrieved by a final decision of the commission entered pursuant to the provisions of subsections 1 and 2 of this section may seek judicial review thereof by appealing, within twenty days of a final decision to the appellate court having jurisdiction in the area where the appellant resides. In such proceedings the attorney general, on behalf of the tort victims' compensation fund, shall defend the decision of the commission. The commission shall not be a party in such actions.

537.693. 1. Payment of any compensation pursuant to sections 537.675 to 537.693 shall vest in the state of Missouri a right of subrogation to the extent of such compensation paid, to any right or right of action of the claimant to recover payments with respect to which the compensation has been paid and to enforce the underlying judgment against the tortfeasor. The attorney general may enforce the subrogation interest, and may file suit to enforce that right of subrogation.

2. The division shall have a lien on any compensation received by the claimant from the tortfeasor or the tortfeasor's agent after payment by the division to the claimant, in addition to compensation received pursuant to the provisions of sections 537.675 to 537.693, for injuries or death resulting from the incident upon which the claim is based. The claimant shall retain, as trustee for the division, so much of the recovered funds as necessary to reimburse the Missouri tort victims' compensation fund to the extent that compensation was paid to the claimant from that fund.

3. If a claimant initiates any legal proceeding to recover

restitution or damages or enforce the underlying judgment related to the tort upon which the claim is based, or if the claimant enters into negotiations to receive any proceeds in settlement or a claim for restitution or damages related to the tort, the claimant shall give the division written notice within fifteen days of the filing of the action or entering into negotiations. The division may intervene in the proceeding of a claimant to enforce its subrogation interest. If a claimant fails to give such written notice to the division within the stated time period or prior to any attempt by claimant to reach a negotiated settlement of claims for recovery of damages related to the tort upon which the claim is based, the division's right of subrogation to receive or recover funds from claimant, to the extent that compensation was awarded by the division, shall not be reduced in any amount or percentage by the costs incurred by claimant attributable to such legal proceedings or settlement, including, but not limited to, attorney's fees, investigative costs or court costs; however, if the claimant provides written notice to the division as required in this section then the subrogation interest of the division shall be reduced by a percentage equal to the percentage that the attorney's fees and expenses incurred by the claimant bears to the total recovery.

4. Whenever the division shall deem it necessary to protect, maintain or enforce the division's right to subrogation or to exercise any of its powers to carry out any of its duties or responsibilities, the attorney general may initiate legal proceedings or intervene in legal proceedings as the division's legal representative.

5. The division is hereby granted authority to adopt rules and regulations, consistent with the provisions of sections 537.678 to 537.693, which rules and regulations may govern application for and distribution of those moneys appropriated to the division from the tort victims' compensation fund.

6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in subsection 5 of this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.